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Attorneys for Defendant
ERNESTO RODRIGUEZ

FILED
Date: 7/26/07
Dept: F
2007 JUL 26 AM 10:30 a.m.
Judge: J. Larson
[set with court
permission]
RICHARD J. WILKINS
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA

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JUL 25 2007

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERNESTO RODRIGUEZ,

Defendant.

No. CR 07-0328 MHP

REQUEST FOR ORDER
EXONERATING BOND,
RECONVEYING PROPERTY,
PROPOSED ORDER, AND
REQUEST TO MODIFY SECURITY
[Fed. R. Crim. P. 46(g)]

On behalf of Claudia Escalante and Oswaldo Anthony Escalante, sureties on the \$200,000 property bond securing Mr. RODRIGUEZ's appearance, Mr. RODRIGUEZ respectfully asks this Court for an order exonerating that bond posted and directing the Clerk of the Court to reconvey the property to them.

Mr. RODRIGUEZ further requests that this court modify his bond to a \$200,000 unsecured appearance bond. The Escalantes agree to be the signatories on an unsecured appearance bond in the same amount.

1 On February 13, 2007, The U.S. Attorney for the Northern District of
2 California (San Francisco) filed a complaint (*case number 3:07-70083*) against Mr.
3 RODRIGUEZ alleging that on or about February 13, 2007, he violated 18 U.S. C. §
4 2241(a)(1).

5 Mr. RODRIGUEZ subsequently entered a not guilty plea to the charge.
6 Magistrate Judge James set bail at \$200,000 and remanded him to custody,
7 where he had been since his arrest on February 13.

8 On April 5, 2007, the parties appeared before Magistrate Judge James.
9 She set the conditions of his release and appearance, which release was secured
10 by a \$200,000 Deed of Trust, the subject of this request to exonerate.
11 Accordingly, Mr. RODRIGUEZ was released from custody on that bond, and within
12 several weeks placed on the electronic monitor as directed by Pre-Trial Services.

13 On July 2, 2007, before the Hon. Chief Justice Marilyn H. Patel, Mr.
14 RODRIGUEZ pleaded guilty to the sole charge alleged in Information filed May 24,
15 2007. His sentencing is presently scheduled for October 1, 2007.

16 Economic exigencies now compel the owners of the home securing Mr.
17 RODRIGUEZ's release, Claudia and Oswaldo Anthony Escalante, to clear this
18 lien. (See Affidavit of Claudia Escalante [Exhibit A] and Affidavit of Oswaldo
19 Anthony Escalante [Exhibit B], attached hereto and made a part hereof.)

20 Therefore, under the authority of Rule 46(g) of the Federal Rules of
21 Criminal Procedure, they respectfully request that this court:

- 22 1. exonerate the bond securing Mr. RODRIGUEZ's release from custody
23 and
24 2. order the Clerk of the U.S. District Court of the Northern District of
25 California to reconvey the property forthwith. (A Full Reconveyance for the Clerk's
26 signature is attached hereto and made a part hereof.)

27 The Escalantes agree to be signatories on an unsecured appearance bond
28 in the amount of \$200,000 which they will execute in open court, with the

1 Magistrate's permission. The U.S. Attorney's Office has no objection to modifying
2 the bond from secured to unsecured. (See Affid. of Gutekunst, attached hereto
3 and made a part hereof.) Mr. RODRIGUEZ will be present in court.

4 Dated: July 23, 2007

5 Respectfully submitted,
6 GAYLE GUTEKUNST
7 ROBERT AMPARÁN
8 Attorneys for Ernesto Rodriguez

9 by

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11 GAYLE GUTEKUNST
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AFFIDAVIT OF CLAUDIA ESCALANTE

I, CLAUDIA ESCALANTE, affirm:

1) I am over the age of 18 years, a resident of Antioch, CA, and a citizen of the United States. I am one of two owners of the property located at 5025 Ranch Hollow Way, Antioch, CA 94531 (the "property"). The other owner is my husband, Oswaldo Anthony Escalante.

2) On April 1, 2007, I pledged this property as security in the release of defendant ERNESTO RODRIGUEZ in the matter of *United States v. Rodriguez*, No. 3-07-70083 in the U.S. District Court in the Northern District of California. The amount secured by the property is \$200,000. A true and correct copy of the Obligation is attached hereto as Exhibit A.

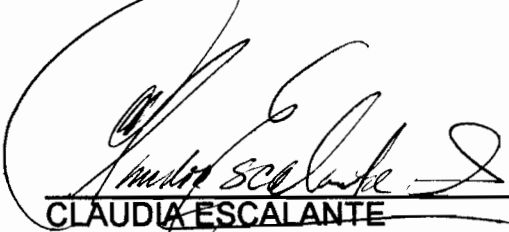
3) On April 4, 2007, I executed a Deed of Trust on the property, naming the Clerk of the United States District Court as Trustee with Power of Sale. A true and correct copy of the executed Deed of Trust is attached hereto as Exhibit B.

4) In order to meet the financial obligations of my family, it has become necessary for me to extract the equity from and refinance my mortgage on the property.

5) I can no longer afford to commit \$200,000 of the equity on the property to secure the appearance in this case of my brother, Mr. Rodriguez. Therefore, I am requesting that this court order that the bail be exonerated as soon as possible, and that the Clerk of the Court reconvey the property to us.

6) I am withdrawing the property as security because of a financial emergency. I am NOT withdrawing the property as security because I am concerned that Ernesto Rodriguez will fail to appear either for his court appearances or his report to custody.

1 I affirm that the foregoing is true and correct and if called upon as a witness to
2 testify hereto I could competently do so. Executed at San Francisco, CA, this 16th
3 day of July, 2007.
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7 CLAUDIA ESCALANTE
8 Affiant
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AFFIDAVIT OF OSWALDO ANTHONY ESCALANTE

I, OSWALDO ANTHONY ESCALANTE, affirm:

1) I am over the age of 18 years, a resident of Antioch, CA, and a citizen of the United States. I am one of two owners of the property located at 5025 Ranch Hollow Way, Antioch, CA 94531 (the "property"). The other owner is my wife, Claudia Escalante.

2) On April 1, 2007, I pledged this property as security in the release of defendant ERNESTO RODRIGUEZ in the matter of *United States v. Rodriguez*, No. 3-07-70083 in the U.S. District Court in the Northern District of California. The amount secured by the property is \$200,000. A true and correct copy of the Obligation is attached hereto as Exhibit A.

3) On April 4, 2007, I executed a Deed of Trust on the property, naming the Clerk of the United States District Court as Trustee with Power of Sale. A true and correct copy of the executed Deed of Trust is attached hereto as Exhibit B.

4) In order to meet the financial obligations of my family, it has become necessary for me to extract the equity from and refinance my mortgage on the property.

5) I can no longer afford to commit \$200,000 of the equity on the property to secure the appearance in this case of my brother-in-law, Mr. Rodriguez.

Therefore, I am requesting that this court order that the bail be exonerated as soon as possible, and that the Clerk of the Court reconvey the property to us.

6) I am withdrawing the property as security because of a financial emergency. I am NOT withdrawing the property as security because I am concerned that Ernesto Rodriguez will fail to appear either for his court appearances or his report to custody.

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1 I affirm that the foregoing is true and correct and if called upon as a witness to
2 testify hereto I could competently do so. Executed at San Francisco, CA, this 16th
3 day of July, 2007.
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6 OSWALDO ANTHONY ESCALANTE
7 Affiant
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AFFIDAVIT OF GAYLE GUTEKUNST

I, GAYLE GUTEKUNST, affirm and declare:

1) I am an attorney at law licensed to practice in the United States District Court in the Northern District of California.

2) I am one of the attorneys representing the defendant, Ernesto RODRIGUEZ, in this action.

3) On Thursday, July 19, 2007, I had a telephone conversation about this case with Special Assistant U.S. Attorney Derek Owens.

4) In that conversation I explained to Mr. Owens that the Escalantes need to unencumber the property securing Mr. RODRIGUEZ's appearance bond. He agreed to allow Mr. RODRIGUEZ to replace the secured appearance bond with an unsecured appearance bond in the sum of \$200,000. He indicated he would prefer that Mr. RODRIGUEZ remain on the electronic monitor as well until his sentencing.

5) After my conversation with Mr. Owens, I spoke with both Claudia Escalante and Oswaldo Anthony Escalante. Both agreed to sign as sureties on an unsecured appearance bond in the sum of \$200,000. Both agreed to be present in court and sign such a bond in the presence of the Magistrate.

I affirm and declare under penalty of perjury that the foregoing is true and correct and if called upon as witness to testify hereto I could competently do so. Executed at San Francisco, CA, this 23d day of July, 2007.


GAYLE GUTEKUNST